HON'BLE SRI JUSTICE GODA RAGHURAM
AND
HON'BLE SRI JUSTICE G.CHANDRAIAH

Rev.W.P.M.P.No.20767 of 2008
and
W.P.M.P.No.34745 of 2012
in
WRIT PETITION No.19978 of 2005

COMMON ORDER: *(per Hon'ble Sri Justice Goda Raghuram)*

Heard Sri B.Adi Narayana Rao, learned senior counsel instructed by Sri K.Durga Prasad, learned counsel for the petitioner and Sri C.V.Rajeev Reddy, learned Standing Counsel for the respondents.

These applications illustrate another bend in a meandering course of litigation. The petitioner (respondent in W.P.No.19978 of 2005) who was serving as an Assistant Catering Inspector Grade-II was imposed the revised penalty of reversion by one grade i.e., to the grade of Catering Manager in the scale of Rs.4,000/- to Rs.6,000/- (RP) and his pay fixed at the minimum of the grade at Rs.4,000/- per month, for three years with cumulative effect, pursuant to a process of disciplinary proceeding. This order was challenged before the Central Administrative Tribunal, Hyderabad Bench by way of O.A.No.145 of 2004. The O.A. was allowed by the order dated 26.04.2005 on the ground that the order was not passed by a competent authority; that the entire disciplinary proceedings stood vitiated on account of the inherent lack of jurisdiction; and consequently, the disciplinary proceedings are void in *toto*. The Tribunal quashed the entire disciplinary proceedings and observed that the respondents herein (the respondents in the O.A) had no option but to restore the applicant to his original post by paying him

all the consequent benefits, within the time stipulated in the order of the Tribunal. This O.A. was filed without impleading either the Union of India or the South Central Railway, the latter of which was the employer. The employee merely impleaded the Additional Divisional Railway Manager (Operations), Secunderabad Division, the Senior Divisional Commercial Manager, Secunderabad Division and the Senior Commercial Manager (Catering), Secunderabad.

These respondents, aggrieved by the order of the Tribunal preferred Writ Petition No.19978 of 2005. A learned Division Bench of this Court, on 12.07.2007 allowed the Writ Petition on the ground that the employee had earlier filed a series of applications before the Tribunal and also approached this Court in respect of earlier stages in the disciplinary proceedings pertaining to the same alleged misconduct. Consequently, the penalty imposed on the employee, which stood invalidated by the order of the Tribunal, stood effaced and the penalty became operative.

Seeking review of the judgment of this Court dated 12.07.2007 in W.P.No.19978 of 2005, the Rev. W.P.M.P. is filed.

Counter has been filed to the Review Petition.

At an earlier stage of hearing of this Writ Petition, it was noticed by this Court that since the petitioner was in employment with the South Central Railway which was not impleaded as a party in the O.A and neither was the Union of India, which are necessary and property parties, the order of the Tribunal would in any event not bind either the Union of India or the South Central Railway, in view of specific provisions of the Constitution of India as fortified by several decisions of

the Court. Conceding this flaw, the petitioner herein (respondent in W.P.No.19978 of 2005) filed Rev.W.P.M.P.No.34745 of 2012, to implead the Union of India and the South Central Railway apart from the Senior Commercial Manager (Catering), Secunderabad as the petitioners by substitution of these petitioners in the array of the petitioners in the cause title of the Writ Petition. These two applications fall for consideration before us today.

In similar circumstances, this Court in ***Chief Works Shops Engineer, South Central Railway V. J.Krishna Babu***[1] while allowing the Writ Petition filed by the respondents to the O.A., set aside the order passed by the Tribunal and granted liberty to the employee-original applicant to file an appropriate application for amendment of the cause title in the O.A. for bringing on record the Union of India and the South Central Railway as parties to the proceedings before it, within the time stipulated in the judgment.

Learned counsel for the respective parties are agreed that a similar course of action be followed in the present case, in the interests of equity and justice, since the order of the Tribunal dated 26.04.2005 in O.A.No.145 of 2004 (where against W.P.No.19978 of 2005 has been preferred) is ineffective and inoperable against the Union of India and the South Central Railway which were not impleaded as respondents thereto.

Since neither the original applicant nor Union of India and the South Central Railway have taken care to implead the proper and necessary parties referred nor was this flaw pointed out by the Railway administration which was a party before the Tribunal; and what is more

the railway administration had recognized the operability of the order of the Tribunal (notwithstanding the fatal infirmity pointed out above) by filing a Writ Petition against the Tribunal's orders before this Court, we consider it appropriate that the order dated 12.07.2007 allowing Writ Petition No.19978 of 2005 be reviewed and modified to the extent below mentioned:

(1) Since neither the Union of India nor the South Central Railway were impleaded as parties before the Tribunal and the order of the Tribunal has invalidated the order dated 20.09.1999 passed by an officer of the South Central Railway purportedly exercising the disciplinary power of the South Central Railway, the order of the Tribunal cannot be sustained. Therefore, the order of this Court only to the extent the Writ Petition is allowed is sustained;

(2) other observations of this Court as to the improprietary or disentitlement of the petitioner/original applicant to have filed O.A.No.145 of 2004, are set aside;

(3) the order dated 26.04.2005 of the Central Administrative Tribunal, Hyderabad Bench in O.A.No.145 of 2004 is set aside as incompetent for non-impleadment therein of the proper and necessary parties i.e., the Union of India and the South Central Railway; and

(4) the original applicant-respondent in the Writ Petition is preserved the liberty of filing an appropriate application, within a period of two weeks from the date of receipt of a copy of this order, for impleading the proper and necessary parties in the O.A. On such an application

being filed and the array of the respondents in the O.A. being amended, the Tribunal shall adjudicate on the merits of the O.A. afresh without in any manner being influenced by the observations in the earlier order of this Court dated 12.07.2007 allowing the Writ Petition.

The applications, Rev.W.P.M.P.No.20767 of 2008 and W.P.M.P.No.34745 of 2012 are disposed of as above.

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JUSTICE GODA RAGHURAM

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JUSTICE G.CHANDRAIAH

16th November 2012
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[1] 2012(2)ALT 351 (D.B.)